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AL-16-000-1995

Congress of the United States
House of Representatives
Washington, DC 20515-4202

November 20, 2015

COMMITTEES:
TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEES:
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OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEES:
NATIONAL SECURITY AND FOREIGN AFFAIRS
GOVERNMENT MANAGEMENT, ORGANIZATION,
AND PROCUREMENT

Ms. Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue
Washington, D.C. 20460

Dear Administrator McCarthy:

We are writing to you out of concern for adverse impacts on the legitimate recycling of nonhazardous rail ties, resulting from delays in implementing procedures established in the Agency's final "Boiler MACT" rule, National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters, 78 Fed. Reg. 7138 (Jan. 31, 2013).

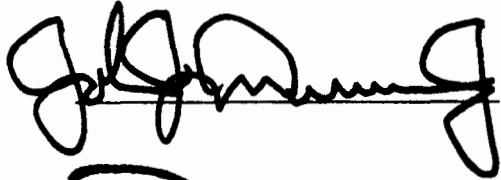
That rule provided a framework under which nonhazardous secondary materials could, after satisfying a series of requirements, qualify as categorical nonwaste fuels eligible for use in boilers and co-gen facilities. EPA is in the process of finalizing a rule that would declare one type of rail ties - creosote-treated rail ties - as a categorical nonwaste, but three other types of rail ties have been caught in a rulemaking time lag that will not be resolved by the Boiler MACT rule's effective date, January 31, 2016.

These three types of rail ties - creosote-borate dual-treated ties, copper naphthenate treated ties, and copper naphthenate-borate dual-treated ties - are equally nonhazardous and valuable as fuel, contain contaminants comparable to or lower than those of traditional fuels and creosote-treated rail ties, and meet the other criteria established in the final rule. All of these rail ties are in demand by energy generating facilities; their use also facilitates EPA's goals of reducing greenhouse gases by

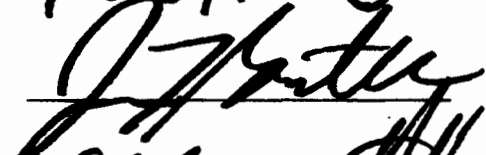
facilities to continue combusting rail ties beyond the January 31, 2016 effective date of the Boiler MACT final rule.

Thank you for your attention to this matter. We respectfully request your response to this letter by December 11, 2015.

Sincerely,



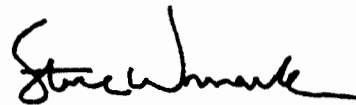
Ron Kind



LaFord Bishop



Mo Brooks



Barbara



AL-16-000-1995



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 27 2016

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

The Honorable John Duncan, Jr.
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Duncan:

Thank you for your letter of November 20, 2015, to the U.S. Environmental Protection Agency (EPA) Administrator Gina McCarthy, concerning the addition of three types of railroad ties to the list of categorical non-waste fuels.

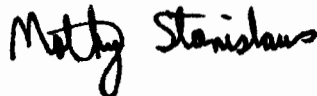
The three types of treated railroad ties referenced in your letter are dual treated creosote-borate ties, copper naphthenate treated ties, and dual treated copper naphthenate-borate treated ties; and you expressed that these treated railroad ties are valuable fuels and are in demand by energy generating facilities, but rulemaking procedures would not allow those materials to be designated as categorical non-wastes by the Boiler MACT rules compliance deadline of January 31, 2016.

In an August 21, 2015, letter to Barnes Johnson, EPA's Director of the Office of Resource Conservation and Recovery, the Treated Wood Council (TWC) requested the agency consider a categorical non-waste determination for dual treated creosote-borate railroad ties, copper naphthenate treated railroad ties and dual treated copper naphthenate-borate railroad ties. In support of this request, the TWC submitted supplemental data in October 2015 on the three types of treated railroad ties. Based on information provided to date, we believe these three types of treated railroad ties may be candidates for a proposed categorical non-waste listing and expect to begin development of a proposed rule regarding those listings in the near future.

The EPA action on the three types of treated railroad ties will follow required rulemaking processes under the Administrative Procedure Act. These processes include public notice and opportunity for comment. Until that rulemaking process is completed, the agency emphasizes that facilities may also make self-determinations of their material under 40 CFR 241.3(b). In order to be regulated as a non-waste fuel under that section, a combustion source can ensure the appropriate regulatory criteria in 241.3(b)(4) are met and make a non-waste determination for the treated railroad ties produced from processed, discarded non-hazardous secondary materials.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Raquel Snyder, in the EPA's Office of Congressional and Intergovernmental Relations, at snyder.raquel@epa.gov, or at (202) 564-1859.

Sincerely,

A handwritten signature in black ink that reads "Mathy Stanislaus". The signature is written in a cursive style with a large, stylized "M" and "S".

Mathy Stanislaus
Assistant Administrator
Office of Land and Emergency Management

FRED UPTON, MICHIGAN
CHAIRMAN

AL-16-000-1908

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

November 18, 2015

Mr. Barnes Johnson
Director
Office of Resource Conservation and Recovery
Office of Solid Waste and Emergency Response
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20004

Dear Mr. Johnson:

Thank you for appearing before the Subcommittee on Environment and the Economy on Tuesday, October 27, 2015, to testify at the hearing entitled "E-manifest: An Update on Implementation."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

Also attached are Member requests made during the hearing. The format of your responses to these requests should follow the same format as your response to the additional questions for the record.

To facilitate the printing of the hearing record, please respond to these questions and requests with a transmittal letter by the close of business on Wednesday, December 3, 2015. Your responses should be mailed to Will Batson, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed to Will.Batson@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



John Shimkus
Chairman

Subcommittee on Environment and the Economy

cc: The Honorable Paul Tonko, Ranking Member, Subcommittee on Environment and the Economy

Attachments

Attachment 1—Additional Questions for the Record

The Honorable Larry Bucshon

1. Indiana does not have a manifest system. The state of Indiana does annual inspections of hazardous waste generators, treatment, storage, and disposal facilities during which the manifest records are checked. Under the E-manifest system, would the Indiana Department of Environmental Management be able to access the manifest documents of the participating generators, treatment, storage, and disposal facilities in the state? And, would they have to pay for access to the information?

Attachment 2—Member Requests for the Record

During the hearing, Members asked you to provide additional information for the record, and you indicated that you would provide that information. For your convenience, descriptions of the requested information are provided below.

The Honorable Bill Flores

1. If a state has not delegated enforcement of Subtitle C, what is the requirement on the manifest once it has been verified by the disposer?

16-000-1908



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 11 2015

OFFICE OF
CONGRESSIONAL AND
INTERGOVERNMENTAL
RELATIONS

The Honorable John Shimkus
Chairman
Committee on Energy and Commerce
Subcommittee on Environment and Economy
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed please find the U.S. Environmental Protection Agency's responses to the Subcommittee's questions for the record following the October 27, 2015, oversight hearing titled "E-manifest: An Update on Implementation."

I hope this information is helpful to you and the members of the Subcommittee. If you have further questions, please contact me or your staff may contact Raquel Snyder in my office at Snyder.Raquel@epa.gov or (202) 564-9586.

Sincerely,

A handwritten signature in black ink, which appears to read "Nichole Distefano", is written over a horizontal line.

Nichole Distefano
Acting Associate Administrator

Enclosure

**Committee on House Energy and Commerce
Subcommittee on Environment and the Economy
Hearing on**

"E-manifest: An Update on Implementation"

Tuesday, October 27, 2015

Question from the Honorable Larry Bucshon

1. Indiana does not have a manifest system. The state of Indiana does annual inspections of hazardous waste generators, treatment, storage, and disposal facilities during which the manifest records are checked. Under the E-manifest system, would the Indiana Department of Environmental Management be able to access the manifest documents of the participating generators, treatment, storage, and disposal facilities in the state? And, would they have to pay for access to the information?

Answer: Yes, the state would have access. Once the e-Manifest program and system are operating nationally, states will have access to all manifests within their jurisdiction. State access will likely be granted through a web based application. States will not be able to enforce electronic manifests under their law without state authorization. To accomplish this, states would need to change existing state laws or regulations to comport with the Environmental Protection Agency's (EPA) electronic manifest regulation published in February, 2014:

<http://www.gpo.gov/fdsys/pkg/FR-2014-02-07/pdf/2014-01352.pdf>.

Regarding payment, the EPA is currently conducting a rulemaking to establish the fee structure for the e-Manifest system. The EPA has been working closely with states and industry users in drafting the proposed rule, which is scheduled for completion in the spring of 2016. The EPA does not anticipate that states will be required to pay for access to the e-Manifest information.

Question from the Honorable Bill Flores

1. If a state has not been delegated enforcement of Subtitle C, what is the requirement on the manifest once it has been verified by the disposer?

Answer: Only two states, Alaska and Iowa, are currently not delegated or authorized to implement and enforce the Resource Conservation and Recovery Act (RCRA) Subtitle C. Regardless of whether a state is authorized, in the current paper-based manifest process, all designated treatment, storage, and disposal facilities (TSDF) must mail a copy of the manifest to the generator, and retain its copy as a record for inspection for three years.

When the e-Manifest system/program is implemented all manifests must come to the EPA (either paper or electronically), regardless of whether a state is authorized or not. Manifests will be filed in the EPA's centralized databases and the manifest and its data will become available for all appropriate handlers to view (states, generators, etc). The requirements for the manifest to document chain of custody, including the requirement that a TSDF must return a copy of the manifest to the generator will remain a requirement of the e-Manifest system, but the process will be handled electronically.

AL-16-000-1806

Congress of the United States

Washington, DC 20515

November 6, 2015

Administrator Gina McCarthy
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Washington, DC 20004

Dear Administrator McCarthy:

As you know, the City of Flint had, and potentially still could have, dangerous levels of lead in its drinking water. We appreciate the Environmental Protection Agency's (EPA) creation of the Flint Safe Drinking Water Task Force and other efforts to provide access to safe, reliable, clean water to the residents of Flint. We seek further information regarding the sustained commitment by the Task Force to work with the State of Michigan to address the long-term effects of lead exposure on Flint's children.

It is our understanding that the City of Flint, the State of Michigan, and the EPA have monitored the situation in Flint since the first report of poor water quality in 2014. However, it is clear that various opportunities to predict and prevent contamination were not taken, exposing Flint residents, and especially infants and pregnant women, to dangerously high levels of contaminants including, but not limited to, lead. This failure of government to ensure the public's safety and health must not be repeated in Flint or anywhere else. While progress is being made to improve the water quality after reconnecting to the Detroit Water System, Flint's residents and its water system are still vulnerable to short and long-term impacts.

It is critical that the local, state, and federal partners remain vigilant, and that EPA take a strong leadership role through the Flint Safe Drinking Water Task Force to prevent further contamination during the current transition to Detroit and the future transition to the permanent connection to Lake Huron source water through the Karegnondi Water Authority (KWA) pipeline. In an effort to understand the actions being taken by Task Force and address current and future challenges with Flint's water, we seek answers to the following questions:

- How often does the Flint Safe Drinking Water Task Force communicate amongst itself, and what are the communication protocols?
- How long will it take for corrosion control agents to fully create a barrier between water and the inside of the pipes?
- How are testing methods being improved to accurately measure water quality and correct testing mistakes of the past?
- How is the EPA and the Flint Safe Drinking Water Task Force interfacing with other federal agencies, such as the Department of Health and Human Services, the U.S. Department of Agriculture, the Department of Education, and other agencies with


respect to the future needs of the residents of Flint stemming from the long-term effects of toxic lead exposure on Flint's children from its drinking water?

- In the future, will the EPA notify residents directly if they believe the local or state government actions are inadequate to properly communicate significant risks to the public?
- The State of Michigan is responsible for ensuring compliance with federal drinking water standards. In addition, the state has elected to assume the legal responsibility for disbursing the resources it receives from EPA's Drinking Water and Clean Water State Revolving Funds. How will the Task Force provide the ongoing, long-term support and oversight needed to ensure the state complies with federal standards and allocates the revolving funds in a manner that most effectively protects public health?

We encourage you to continue monitoring and supporting any and all ongoing measures by the EPA and the Task Force to test for and reduce contaminants in drinking water, prepare for the future transition to the KWA pipeline to Lake Huron, and identify and replace aging water infrastructure. Your presence in Flint will help restore the confidence in the ability of water quality regulators and begin to rebuild the trust in the effectiveness of the critical safeguards found in laws such as the Safe Drinking Water Act.

We appreciate your prompt response to these questions and invitation as well as your continued attention to this matter.

Sincerely,


Gary C. Peters
U.S. Senator


Debbie Stabenow
U.S. Senator


Dan Kildee
Member of Congress

AL-16-000-1806



United States Environmental Protection Agency
Regional Administrator
Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590
DEC 07 2015

The Honorable Gary Peters
United States Senate
SH-724 Hart Senate Office Building
Washington, DC 20510

Dear Senator Peters:

Thank you for your November 6, 2015 letter regarding the U.S. Environmental Protection Agency's Flint Safe Drinking Water Task Force.

As a result of your letter, we have scheduled weekly calls to brief your staff on the work that the EPA Task Force is doing to provide technical assistance to the State of Michigan and the City of Flint. During those calls we have discussed the Task Force's work with the State and the City to optimize corrosion control for the Flint system, following the decision to switch to drinking water supplied by the Great Lakes Water Authority. We have also discussed the work that the Task Force is doing to help the State and City prepare for the planned switch to water supplied by the Karegnondi Water Authority in 2016. We will continue to provide weekly briefings on Task Force activities for as long as your staff finds the briefings to be useful.

Thank you again for your letter. If you have further questions, please feel free to contact me or your staff may contact Denise Fortin or Ronna Beckmann, the Region 5 Congressional Liaisons, at (312) 886-3000.

Sincerely,

A handwritten signature in black ink, appearing to read "SH", is located below the "Sincerely," text.

Susan Hedman
Regional Administrator

UNITED STATES SENATE

CLAYTON L. LUTHER, JR.
 JAMES H. CARROLL, JR.
 ROBERT C. BYRD, JR.
 MARK R. WARREN
 KENNETH C. COCHRAN
 EDWARD J. MARKEY
 ROBERT C. MANNING
 JEFFREY M. BLUMENTHAL
 MURKIN, N.Y. 10001
 JAMES H. CARROLL, JR.

ROBERT C. BYRD, JR.
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 ROBERT C. BYRD, JR.
 JAMES H. CARROLL, JR.

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

CLAYTON L. LUTHER, JR.
 JAMES H. CARROLL, JR.

November 20, 2015

The Honorable Mathy Stanislaus
 Assistant Administrator
 Office of Solid Waste and Emergency Response
 U.S. Environmental Protection Agency
 Ariel Rios Federal Building
 1200 Pennsylvania Ave., NW
 Washington, DC 20460

Re: The Regulatory Status of Railroad Ties

Dear Administrator Stanislaus:

Last year, EPA proposed to add additional fuels to the list of categorical non-waste fuels under 40 C.F.R. 241.4. (*Proposed Additions to List of Section 241.4 Categorical Non-Waste Fuels*, 79 Fed. Reg. 21006 (Apr. 14, 2014)). Fuels on this list may be combusted for energy recovery by facilities subject to EPA's 2013 final "Boiler MACT" rule, *National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters*; Final Rule, 78 Fed. Reg. 7138 (Jan. 31, 2013). It is our understanding that EPA expects to finalize this proposal shortly.

Among the fuels EPA proposed to identify as non-waste fuels are creosote-treated rail ties (CTRTs). It is our understanding that comments submitted on that proposed rule requested EPA to also list three newer types of rail ties that are increasingly being placed into service in addition to or as alternatives to CTRTs, and included extensive data to support that request. These other ties are creosote-borate dual treated rail ties (CBTRTs), copper naphthenate treated rail ties (CNTRTs), and copper naphthenate-borate dual treated rail ties (CNBTRTs).

The data submitted to EPA in comments show that levels of contaminants in CBTRTs, CNTRTs, and CNBTRTs are comparable to or lower than those in traditional fuels and also comparable to or lower than those in CTRTs. EPA has previously determined that "borate-treated wood meets the legitimacy criterion [set forth in 40 C.F.R. §241.4] on the level of contaminants and comparability to traditional fuels." (*Identification of Non-Hazardous Secondary Materials That Are Solid Waste*; Final Rule, 76 Fed. Reg. 15456, 15484, (Mar. 21, 2011)). The comments also include substantial information showing that these newer materials are processed in the same manner as CTRTs, are managed as a valuable commodity, and meet the meaningful heating value threshold relied upon in the final rule listing CTRTs as a non-waste fuel.

Assistant Administrator Stanislaus

November 20, 2015

Page 2

It is our hope that EPA will list these newer types of ties in the forthcoming final rule. However, if EPA does not take final action on these ties at that time, we request EPA to summarize the information received, explain whether that information meets the standard for listing a material as a non-waste fuel, and, assuming that it does, use the preamble of the forthcoming final rule to express its intention to list CBTRTs, CNTRTs, and CNBTRTs as categorical non-waste fuels under 40 C.F.R. §241.4 in the very near future.

In addition, given that these newer materials have favorable endurance and environmental characteristics, have been in use for a relatively short time, and are in the early stages of their useful primary life, it is unlikely that many will be removed from service in the near future. However, given that rail ties treated with different types of preservatives cannot be distinguished from one another without extensive testing, even the possibility that a few newer ties may be mixed with CTRTs may cause combustors to stop combusting rail ties until EPA promulgates a new rule, resulting in unnecessary stockpiling, or even land disposal, of these biomass fuels.

To avoid this adverse outcome, we also ask EPA to announce that it will use its enforcement discretion to forgo taking enforcement action against combustors of railroad ties based on a failure to demonstrate what type of rail ties they are combusting, until EPA has the opportunity to address these newer ties through rulemaking. There is ample precedent for such action. *See, e.g., 67 Fed. Reg. 18899 (Apr. 17, 2002) (enforcement discretion for failure to report releases of certain pollutants until an administrative reporting exemption was promulgated in 2006).*

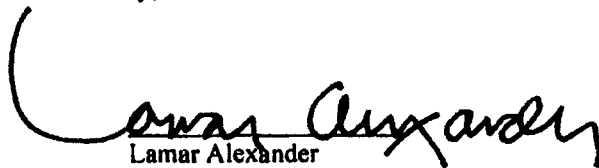
Finally, we request EPA to facilitate state efforts to utilize the one-year extension available under section 112(i)(3)(B) of the Clean Air Act, 42 U.S.C. §7412(i)(3)(B) to enable facilities to continue combusting rail ties beyond the January 31, 2016 effective date of the Boiler MACT final rule.

Thank you to your attention to this matter. Please let us know how you intend to address this issue by December 4, 2015.

Sincerely,



James M. Inhofe
Chairman
Committee on Environment and Public Works




Lamar Alexander
United States Senator

Assistant Administrator Stanislaus
November 20, 2015
Page 3


Charles Grassley
United States Senator


Mike Crapo
United States Senator


Jerry Moran
United States Senator


Jeff Sessions
United States Senator

cc: Stan Meiburg, EPA
Barnes Johnson, EPA
Betsy Devlin, EPA
Jim Laity, OMB
Kevin Bromberg, SBA

AL-16-0004721



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 29 2016

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

The Honorable James M. Inhofe
Chairman
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for your letter of November 20, 2015, to the U.S. Environmental Protection Agency (EPA) concerning the addition of three types of railroad ties to the list of categorical non-waste fuels in 40 CFR 241.4. The three types of treated railroad ties referenced in your letter are dual treated creosote-borate ties, copper naphthenate ties, and dual-treated copper naphthenate-borate ties. You requested that these materials be added to a current final rulemaking that addresses whether creosote-treated rail ties (CTRTs) are categorical non-wastes when combusted. That rule is currently undergoing EPA and interagency review. In the alternative, you requested that the EPA express its intention to list these materials as categorical non-waste fuels under section 241.4 in the very near future.

Your letter also requested that the EPA facilitate state efforts to use the one-year extension authority provided in section 112(i)(3)(B) of the Clean Air Act, 42 U.S.C. § 7412(i)(3)(B), to enable facilities to continue combusting railroad ties beyond the January 31, 2016, effective date of the Boiler MACT final rule. You also asked that the agency use its discretion to forgo taking enforcement action against combustors of railroad ties until the three types of railroad ties are addressed in a future rulemaking.

In an August 21, 2015, letter to Barnes Johnson, the EPA's Director of the Office of Resource Conservation and Recovery, the Treated Wood Council (TWC) requested the agency consider a categorical non-waste determination for dual treated creosote-borate railroad ties, copper naphthenate treated railroad ties, and dual treated copper naphthenate-borate railroad ties. In support of this request, the TWC submitted supplemental data on the three types of railroad ties. Based on information provided to date, we believe these three types of treated railroad ties may be candidates for a proposed categorical non-waste listing and expect to begin development of a proposed rule regarding these listings in the near future.

The EPA action on the three types of treated railroad ties, however, must follow required rulemaking processes, under the Administrative Procedure Act. These processes include public notice and

opportunity for comment. Inclusion of the three types of treated railroad ties within the current final rulemaking would not afford the public these opportunities.

Your letter also indicated that these newer types of treated railroad ties have favorable endurance and environmental characteristics. However, because railroad ties treated with different types of preservatives cannot be distinguished from one another without extensive testing, a few of the new types of railroad ties may have been mixed in with CTRTs (which comprise the majority of the railroad ties today). Such mixing may cause combustors to stop burning railroad ties altogether until a new rule on the additional three types of railroad ties is promulgated. Your letter expressed concern that this would result in unnecessary stockpiling or land disposal of the railroad ties.

The agency has concluded based on information it has now, that if CTRTs are determined to be categorical non-wastes under the current final rulemaking, CTRTs with very small (i.e., *de minimis*) amounts of the newer three types of railroad ties could be combusted as non-waste fuels even if there is no categorical listing rule for that new material. This conclusion is consistent with statements concerning construction and demolition (C&D) wood in the March 2011 final Non-Hazardous Secondary Materials rule where the EPA acknowledged that C&D-derived wood may meet the legitimacy criteria even if it contains de minimis amounts of contaminants (76 FR 15486).

Combustors may also make self-determinations of their material under 40 CFR 241.3(b). In order to be considered a non-waste fuel under that section, a combustion source may ensure the appropriate regulatory criteria in 241.3(b)(4) are met and make a non-waste determination for the treated railroad ties produced from processed, discarded non-hazardous secondary materials. If a source combusting these materials cannot make this determination, it may burn the fuel under solid waste incineration standards issued under Clean Air Act section 129, 42 U.S.C. §7429. In either case, the railroad ties can be used as a fuel in lieu of landfilling if the applicable emissions standards are met.

Regarding the use of a compliance extension, the applicable statutory provision at 42 U.S.C. § 7412(i)(3)(B) is implemented in the EPA's regulations at 40 CFR § 63.6(i)(4). The requirements for the compliance extension are:

- The request generally must be submitted no later than 120 days before the compliance date.
- The request must be based on additional time needed for the installation of controls.
- The request may be submitted after the 120 day deadline, if the need for the compliance extension request arose after the submittal deadline, and before the otherwise applicable compliance date and the need arose due to circumstances beyond the reasonable control of the owner or operator.

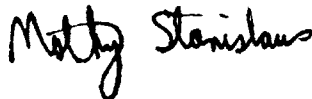
As discussed previously, we believe that sources burning treated railroad ties would be subject to emissions standards contained in the Boiler MACT if they meet the non-waste criteria and make a self-determination under 40 CFR 241.3(b). There is nothing in your letter that indicates that additional time is needed for the installation of controls to comply with the Boiler MACT, which must be demonstrated for purposes of an extension of the compliance date. However, if a specific source needs additional time for the installation of controls, since the deadline for the 120 day submittal has passed, those sources should work with their state permitting authority as soon as possible. We emphasize that such requests received after the 120 day deadline must demonstrate that the "need arose due to circumstances beyond reasonable control of the owner or operator."

We coordinated with the Office of Enforcement and Compliance Assurance and, for the reasons described above, there is no need or basis for the agency to issue a "no action assurance" letter to allow for this activity during the time the agency evaluates the need for rulemaking for additional categorical determinations. In addition, a no action assurance should be recognized as an exceptional and unusual action taken to avoid extreme risks to public health or safety, such as to address an emergency or other urgent hardship, and not as a substitute for an open and public rulemaking process such as those currently underway.

In summary, the EPA's anticipated rulemakings on the three additional types of treated railroad ties, the agency's determination that CTRTs can contain de minimis amounts of these additional materials, the option of pursuing self-determinations under 40 CFR 241.3(b), as well as recommendations regarding the applicability of compliance extensions under 42 U.S.C. § 7412(i)(3)(B), should address your concerns relative to combustion of these treated railroad ties as non-waste fuels.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Raquel Snyder, in the EPA's Office of Congressional and Intergovernmental Relations, at snyder.raquel@epa.gov, or at (202) 564-9586.

Sincerely,

A handwritten signature in black ink that reads "Mathy Stanislaus". The signature is written in a cursive, slightly slanted style.

Mathy Stanislaus
Assistant Administrator
Office of Land and Emergency Management

AL-16-000-1221

AMY KLOBUCHAR
MINNESOTA

COMMITTEES
AGRICULTURE, NUTRITION,
AND FORESTRY
COMMERCE, SCIENCE,
AND TRANSPORTATION
JOINT ECONOMIC COMMITTEE
JUDICIARY
RULES AND ADMINISTRATION

United States Senate
WASHINGTON, DC 20510

November 4, 2015

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

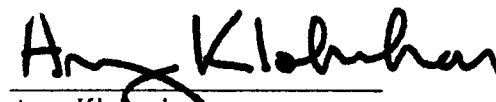
Dear Administrator McCarthy:

I write to inquire about the status of the promulgation of the rules in response to the Formaldehyde Standards for Composite Wood Products Act (P.L. 111-199) passed in the 111th Congress and enacted into law by President Obama in July 2010.

It is very concerning that that we are now approaching three full years past the statutory deadline for these rules to be finalized. This legislation was a critical step forward in consumer safety, setting strong limits for formaldehyde emissions to protect consumers from potentially hazardous levels of formaldehyde in composite wood products. The legislation had bipartisan support as well as the support of industry, public health and environmental groups.

A national formaldehyde standard for composite wood products will help protect American consumers and families and I urge the EPA to finalize these rules as quickly as possible.

Sincerely,



Amy Klobuchar
United States Senator

AL-16-000-1221



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D.C., 20460

DEC 23 2015

OFFICE OF
CHEMICAL SAFETY AND
POLLUTION PREVENTION

The Honorable Amy Klobuchar
United States Senate
Washington, D.C. 20510

Dear Senator Klobuchar:

Thank you for your November 4, 2015 letter to Gina McCarthy, Administrator of the U.S. Environmental Protection Agency, regarding the progress of the implementation of the Formaldehyde Standards for Composite Wood Products Act or Title VI of the Toxic Substances Control Act. The EPA agrees that a national formaldehyde standard for composite wood products is a critical step forward in consumer safety that will help protect American consumers and families and we are working diligently to finalize the regulations that will implement the Act.

However, there have been several challenges in this process that have affected the timeline for the EPA's final rules. In particular, the statutory directive to address laminated products – an area beyond the scope of the California Air Resource Board (CARB) standard - has raised some difficult issues. Given potential modifications to the Agency's proposed treatment of laminated products, the EPA reopened the public comment period for the proposed rule to seek additional public input. The EPA received thousands of comments from a diverse array of stakeholders on this issue. Additional time was needed to consider these comments and analyze how the information should impact or change the proposed rules.

The Agency is finishing responding to those comments, resolving some remaining technical and legal complexities, and incorporating changes into the final rule. The EPA now expects to submit the final rule for interagency review in early calendar year 2016.

Again, thank you for your letter. If you have further questions, please contact me or your staff may also contact Mr. Sven-Erik Kaiser in the EPA's Office of Congressional and Intergovernmental Relations at kaiser.sven-erik@epa.gov or (202) 566-2753.

Sincerely,

A handwritten signature in black ink, appearing to read "James J. Jones".

James J. Jones
Assistant Administrator